

HOUSE No. 1769

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Vallee

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Amending The Mechanic's Lien Law.

PETITION OF:

NAME:

James E. Vallee

DISTRICT/ADDRESS:

10th Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT AMENDING THE MECHANIC'S LIEN LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 254 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out section 1 and replacing with :-

As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meaning:—

Definitions

(a) The term “design professional” refers to licensed architects, registered professional engineers, registered land surveyors, and licensed site professionals.

(b) The term “professional services” refers to those services performed by licensed architects, registered professional engineers, registered land surveyors and licensed site professionals and includes design, planning, construction administration and surveying services.

A person to whom a debt is due for personal labor or professional services performed in the design, planning, construction administration, surveying, erection, alteration, repair or removal of a building or structure upon land or improvement or alteration to real property, by virtue of an agreement with, or by consent of, the owner of such building or structure, or of a person having authority from or rightfully acting for such owner in procuring or furnishing such professional services or labor, shall, under the provisions of this chapter, other than section four, have a lien upon such building or structure and upon such interest in such real property, land, building, structure, or improvement owned by the party authorizing or consenting to said work or professional services, for not more than thirty days’ work or services actually performed for the ninety days next prior to his filing a statement as provided in section eight.

A person or his assignee, agent, authorized representative or third party beneficiary, to whom amounts are due or for whose benefit amounts are computed and due for, or on the basis of, the personal labor or professional services of such person, may file a lien to secure the payment of such unpaid amounts including interest and agreed penalties for failure to pay the same.

SECTION 2. Section 2 of said chapter 254, is hereby amended by striking out section 2 and replacing with :-
Section 2. A person entering into a written contract with the owner of any interest in real property, or with any person acting for, on behalf of, or with the consent of such owner for the whole or part of the design, planning,

construction administration, surveying, erection, alteration, repair or removal of a building, structure, or other improvement to real property, or for furnishing material or rental equipment, appliances, or tools therefor, shall have a lien upon such real property, land, building, structure or improvement owned by the party with whom or on behalf of whom the contract was entered into, as appears of record on the date when notice of said contract is filed or recorded in the registry of deeds for the county or district where such land lies, to secure the payment of all labor, including construction management and general contractor services, professional services and material or rental equipment, appliances, or tools which shall be furnished by virtue of said contract. Said notice may be filed or recorded in the registry of deeds in the county or registry district where the land lies by any person entitled under this section to enforce a lien, and shall be in substantially the following form:

Notice is hereby given that by virtue of a written contract dated ____, between ____, owner, and ____, contractor, or ____, design professional, said contractor or design professional is to furnish or has furnished labor and material or professional services or rental equipment, appliances or tools for the design, planning, construction administration, surveying, erection, alteration, repair or removal of a building, structure, or other improvement on a lot of land or other interest in real property described as follows:

(INSERT DESCRIPTION)

Such person may file or record the notice of contract at any time after execution of the written contract whether or not the date for performance stated in such written contract has passed and whether or not the work or services under such written contract has been performed, but not later than the earliest of: (i) sixty days after filing or recording of the notice of substantial completion under section two A; or (ii) ninety days after filing or recording of the notice of termination under section two B; or (iii) ninety days after such person or any person by, through or under him last performed services or performed labor or furnished labor or materials or both labor and

SECTION 3. Section 2B of said chapter 254, as so appearing, is hereby amended by inserting after the word "contractor", in line 9, the following words: - or as design professional for the design, planning, construction, administration or surveying services.

SECTION 4. Said Section 2B of said chapter 254, as so appearing, is hereby amended by inserting after the word "contractor" in line 16, the following words: - or design professional.

SECTION 5. Section 4 of said chapter 254, as so appearing , is hereby amended by inserting the following: -

Section 4A. Design professionals who provide professional services under a written contract with an Owner may file or record in the registry of deeds for the county or district where such land lies a notice of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated ____, between ____ design professional and ____ said ____ has provided design, planning, construction administration or surveying services relating to a building, structure or other improvement of real property by ____, design professional for ____, owner, on a lot of land or other interest in real property described as follows:

(Insert description)

As of the date of this notice, an account of said contract is as follows:

1. contract price _____

2. payments received _____

3. amount owed _____

66 The regular mailing address of the party recording or filing this notice is as follows: ____

67 Such person may file or record the notice of contract at any time after execution of the written contract whether or
68 not the date for performance stated in such written contract has passed and whether or not the services under such
69 contract have been provided, but not later than the earliest of: (i) sixty days after filing or recording the notice of
70 substantial completion under section two A; or (ii) ninety days after filing or recording of the notice of termination
71 under section two B; or (iii) ninety days after the last day a person entitled to enforce a lien under section two or
72 anyone claiming by through or under him performed or furnished labor or materials or both labor and materials to
73 the project or furnished rental equipment, appliances or tools.

74 Such notice may also be filed by a person or his assignee, agent, authorized representative or third party beneficiary
75 to whom amounts are due or for whose benefit amounts are computed and due for or on the basis of the services of
76 that person providing services under a written contract and the person filing such notice shall not be required to
77 itemize the amount of the contract, the amount of outstanding claims or the amount paid in such notice.

78 Upon filing or recording a notice, as hereinbefore provided, the design professional shall have a lien upon such real
79 property, land, building, structure or improvement owned by the party who entered into the original contract as
80 appears of record at the time of such filing, to secure the payment of all professional services provided for the
81 building or structure or other improvement, regardless of the amount stated in the notice of contract. If the person
82 claiming a lien under this section has no direct contractual relationship with the owner, but is a licensed architect or
83 registered professional engineer acting as a sub-consultant, the sub-consultant shall, after filing or recording a
84 notice, and giving actual notice to the owner of such filing, have a lien upon such real property, land, building,
85 structure or improvement owned by the party who entered into the original contract with the licensed architect or
86 registered professional engineer.

87 SECTION 6. Section 5 of said chapter 254, as so appearing, is hereby amended by inserting in line 1 the following
88 words:- design, planning, construction administration, or surveying services.

89 SECTION 7. Section 7 of said chapter 254, as so appearing, is hereby amended by striking in lines 2 and 3 the
90 following words:- 'is in the' and replacing with the following words:- or professional services provided is in design,
91 planning, construction administration or surveying services.

92 SECTION 8. Section 8 of said chapter 254, as so appearing, is hereby amended by inserting in line 2 after the word
93 "subcontractor" the following words:-design professional.